

**Testimony of Thomas M. Gardner**  
**Before the Subcommittee on Capital Markets of**  
**the Committee on Financial Services**  
**of the United States House of Representatives**  
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**I. Introduction and Background**

Good morning. My name is Tom Gardner and I am co-founder of The Motley Fool, Inc., a multimedia personal finance company headquartered right across the Potomac River in Old Town Alexandria, Virginia. It is truly a pleasure to be before this subcommittee to talk about what equal access to information means to individual investors.

In 1994, my brother, David, and I started The Motley Fool as a newsletter with a mission to “educate, amuse, and enrich” the individual investor. In choosing a name for our company, we searched for something that would signify what we stood for: telling people the truth about personal finance and investing. In Elizabethan theater, the Fool was the only one who could tell the king the truth without getting his head chopped off.

Today, The Motley Fool educates more than 30 million people each month about personal finance and investing. We reach consumers and investors in more than 100 countries through our website, radio and television broadcasts, newspapers, and books.

Our work is driven by our belief that average people can benefit from taking a more active interest in the management of their money. In order to exercise this control, investors need education, information, the opportunity for dialogue, and an open platform for questions and answers. That's what we provide. We teach people the fundamentals of long-term financial management. We help them find the resources they need to become successful investors. And we provide a forum for a thriving online community that learns from each other 24 hours a day, 7 days a week, 365 days a year.

## **II. The need for a level playing field**

But I'm not really here today as a business owner. I'm here because The Motley Fool represents people from all walks of life who go to work, earn money, and make decisions about the financial path their lives will take. Over the past eight years, we've heard from our members again and again about the importance of access to simple information - information about Einstein's miracle of compounding growth, information about the *real* (after-fee and after-tax) returns of managed mutual funds, information about any public company's quarterly earnings result. And, for investors, **access** to information means that, in a public market, this information must be available to **all** investors at the same time.

Protecting this simultaneous access to information has been and should continue to be a focus of the SEC in recent years. When Arthur Levitt became SEC Chairman in 1993, one of his main priorities was to establish a completely level playing field for all investors. Under his guidance, 1) the SEC required that prospectuses be written in “plain English” rather than in some foreign, obscure language; 2) the SEC sought to protect the integrity of the financial reporting process by requiring public companies to provide investors with information about their relationships with their auditors; 3) the SEC required mutual funds to report their results more clearly to their investors; and finally, and importantly, 4) the SEC passed Regulation FD to ensure that all investors, regardless of their geographic location, their professional standing, or the size of their brokerage account, got access to the same information at the same time.

And **that’s** what I’d like to talk to you about today – the importance of maintaining and advancing the public nature of our markets.

### **III. The need for the public markets to be PUBLIC**

Every day millions of investors put their money in the stock market and become *part owners* of companies and businesses they believe in. But besides just having the chance to become a business owner, every investor sets out with the goal to grow their assets and build their wealth.

Over the last 100 years, the stock market has provided the best long-term means to build our wealth. It’s provided average annual returns of around 11% and has allowed us to put down payments on homes, to pay for our kids' educations, and to retire comfortably. And along the

way the *public* market has financed some pretty impressive businesses and led to the creation of products that have changed our lives. A company like Johnson & Johnson improves the lives of millions of people each year – and has done so for more than a hundred years – due in large part to its access to capital in the *public* markets.

The problem is that professional investors on Wall Street have increasingly tried to create private markets of information to benefit themselves and their firms. Selective disclosure by the mid-1990s was a primary source of what I consider to be illegal inside information and insider trading that Wall Street analysts and fund managers participated in. They received material information in advance of individual investors. And the evidence shows they acted on that information before the rest of the market encountered it.

The net result of private, preferred markets within our general public market is that smaller investors reduce their investments. Thinking the game is rigged, they pull back. They recognize that selective disclosure leads to “investing” that is not based on analysis, hard work, and intelligence but instead on who you know or how much money you can invest.

If we were to establish a capital market system today from scratch, wouldn't we prohibit selective disclosure? Wouldn't we want all investors, regardless of the size of their portfolio or their position relative to lower Manhattan, to get the same information from the companies they own? I can't imagine wanting any other sort of public market in a free country.

Shouldn't the soccer mom who is putting \$100 a month into a dividend reinvestment plan for her child's college education have access to the same information at the same time as the fund manager who wears a nice suit, carries a bottle of Mylanta, and has to decide where to put his million dollars?

Selective disclosure undermines this equal access. Selective disclosure – a common practice on Wall Street for years – is a direct violation of the spirit and law of our public markets. It is a violation that should be of the highest concern to those who oversee the market – the SEC and the United States Congress.

When the federal securities laws were enacted in 1933, Congress gave the SEC a mandate to protect investors. Under this mandate, the SEC is obliged to protect **all** investors: technology investors in Silicon Valley; long-term investors in Omaha, Nebraska; patient investors in Gulfport, Mississippi; and professional investors on Wall Street. The SEC is obliged to protect all investors, regardless of who they may know, how much money they have to invest, and how well they might do. Any SEC action that contravenes this duty would naturally force us to ask why American citizens would pay tax money to fund a regulatory agency that might not protect those citizens' best interests.

#### **IV. The fight against Regulation FD**

Regulation FD dramatically changed the financial landscape this past year. It sought to protect all investors. It made the soccer mom and the analyst equal in the eyes of a public company and in the eyes of the law. And while many individual investors were surprised that selective disclosure wasn't already prohibited, analysts and institutional investors have attempted to use their influence and power to prevent the enforcement of Regulation FD. They are still fighting.

But they're not fighting Regulation FD based on its fairness to all investors. They must know it is fair. Instead they argue that Regulation FD prevents them from sorting through important information that they can then share with the rest of the marketplace.

As an individual investor, I am insulted by the implication that individual investors are not smart enough to flesh out the information they need without the help of an analyst. Every day, we see and talk to investors that take control of their personal finances and investment decisions and are quite successful. We also encounter a number of professional investors who use our forum to learn from the armies of researchers that gather at Fool.com.

To claim or even imply that individual investors need interpreters takes us back to the Middle Ages when the common man was forced to rely on the priestly class to interpret the Bible for him. The arrival of the printing press made more books available and gave common folks a first hand opportunity to interpret the Bible for themselves. Similarly, the Internet allows individual

investors to access, analyze, and act on financial information. I certainly don't see a need for professional investors to earn an illegal information advantage in order to then translate that information, on delay, for individual investors.

The argument that analysts benefit individual investors because they sift through information and help them decide what's important simply isn't true. We know that analysts are not neutral observers. We know that they're not objective sources. They work for big investment firms and shoulder the burdens of powerful interests. That's one of the reasons that only 1% of all analyst recommendations last year were "sell" recommendations. Why? Because analysts work at firms that broadly seek underwriting deals with public companies, and that renders the analyst a very subjective player in the public markets.

While we're talking about analysts, what exactly is an analyst, and why can't I, as an individual investor, be one? If I'm analyzing 10-K's, 10-Q's, and press releases, or if I'm talking with other investors or people from the company, aren't I already an analyst? Who determines which analysts get to sit on exclusive quarterly conference calls? Who determines which analysts gain access to private, closed-door meetings with company executives? Who determines which analysts get earnings guidance from the CFOs at public companies before the general public hears of it? I'd like to know. Because I, and tens of millions of other American investors, would officially like to sign up to be in that group.

Opponents of Regulation FD will say that it has increased market volatility. However, they won't be able to provide any evidence. And even if they could, is it Congress and the SEC's

responsibility to reduce market volatility? Furthermore, how they define their studies of volatility should be of particular interest to those responsible for protecting all investors and preserving the public nature of our public markets. If a company releases bad news simultaneously to everyone and its stock falls from \$30 to \$25, is this any more volatile than if the company had selectively released information to professionals on Wall Street, who dropped the stock from \$30 to \$27, then released the information to the general public, who sold it down to \$25? Keep your eyes focused on the time periods applied to these volatility studies.

Opponents of full disclosure will also argue that Regulation FD has somehow stifled corporate disclosure. Again, there will be no evidence to back up this claim. In fact, last Friday's *Wall Street Journal* reported that Progressive Insurance plans to start reporting financial information on a monthly, rather than quarterly, basis. Progressive's CFO saw Regulation FD as "an opportunity for us to open up more" to investors. Regardless, would we want more information if that information were protected for a privileged group of Wall Street investors? In a free country, wouldn't our public markets function more effectively with less information delivered fairly than more information delivered illegally?

## **V. Don't take Regulation FD away**

The SEC received more than 6500 comment letters about Regulation FD, more comment letters than the SEC had ever received on a single proposal. A large percentage of those comment letters were submitted by individual investors at The Motley Fool. By our count, 50% of the comment letters were sent to the SEC on the days that we featured editorial content about the



issue in which we encouraged people to make their views known to the SEC. Our worldwide community of investors cares greatly about this issue.

Some of the letters contained detailed economic analyses of why the market could not function efficiently if selective disclosure were allowed to continue. Some of the letters simply stated that selective disclosure just wasn't fair and that it shouldn't matter who you know or how much money you have. A number of investors also expressed shock and surprise that Regulation FD wasn't already mandated. Over and over again, the point of these letters was the same: individual investors ought to be **entitled** to the same information at the same time as Wall Street investors. I am here today as a representative of that community of individual investors who voiced their desire for a level playing field. That community is invested in the market. Today, almost 50% of all U.S. households are exposed to the stock market, either directly or through mutual funds and retirement plans. That's more than double the number of equity investors fifteen years ago. It is clear that individual investors are a vital part of our public markets.

With that in mind it is important for the SEC and Congress to listen to individual investors who write:

Imagine my horror when I found that regardless of the amount of research I did on a company in which I was a part owner, I could quite legitimately be kept in the dark about highly relevant facts that were released to a closed group of financial people with their own specific financial interests.

Now that Regulation FD is in effect, I can do my own analysis on a level playing field with everybody else.

Selective disclosure compromises the integrity and efficiency of our markets and turns them from public markets, where everyone has the same access and opportunities, to private markets, where who you know and how much money you have are more important. This is not a principle on which our country was founded, nor should it be a principle of our market.

I'd like to close with a quote from former SEC Chairman Arthur Levitt that explains why he believes that preserving the public nature of our markets is extremely important to the integrity, confidence, and efficiency of those markets.

Simply put, these practices defy the principles of integrity and fairness.... We teach our children that a person gets ahead through hard work and diligence... that through equal opportunity, everyone has a chance to succeed. America's marketplace should be no exception. Instead, it should serve as a beacon.

I couldn't agree more.

Thank you.